

Brian R. Talcott, OSB No. 965371
DUNN CARNEY LLP
851 SW Sixth Avenue, Suite 1500
Portland, OR 97204
Telephone: (503) 224-6440
Facsimile: (503) 224-7324
E-mail: btalcott@dunncarney.com

Cary D. Sullivan (*admitted Pro Hac Vice*)
JONES DAY
3161 Michelson Drive, Suite 800
Irvine, CA 92612
Telephone: (949) 851-3939
Facsimile: (949) 553-7539
E-mail: carysullivan@jonesday.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON – PORTLAND DIVISION

ESHA RESEARCH, INC., now known as
TRUSTWELL,

Plaintiff,

v.

CRONOMETER SOFTWARE, INC.,
formerly known as BIGCRUNCH
CONSULTING, LTD., and DOES 1-20.

Defendants.

Civil No. 3:24-cv-01586-AB

**DECLARATION OF KATY JONES IN
RESPONSE TO DEFENDANT
CRONOMETER'S UNOPPOSED
MOTION TO FILE UNDER SEAL**

Page 1

**K. JONES DECLARATION IN
RESPONSE TO DEFENDANT'S
UNOPPOSED MOTION TO SEAL**

DUNN CARNEY ALLEN HIGGINS & TONGUE
LLP
Attorneys at Law
851 SW Sixth Ave., Suite 1500
Portland, Oregon 97204-1357
503.224.6440 / Fax: 503.224.7324

DECLARATION OF KATY JONES

I, Katy Jones, hereby declare as follows:

1. I am the Chief Executive Officer of plaintiff ESHA Research, Inc., now known as Trustwell (“Trustwell”). I submit this declaration in response to defendant Cronometer’s unopposed motion to file under seal in this action. I know the following facts to be true based upon my own personal knowledge or upon my review of the records and files maintained by Trustwell in the regular course of business. If called and sworn as a witness, I could and would competently testify concerning such matters.

2. I have reviewed Cronometer’s unopposed motion to file under seal in this action (ECF No. 23), and the three exhibits that Cronometer seeks to seal through that motion—Exhibits 10, 11, and 12 to the Declaration of Nika Aldrich (ECF No. 22) in support of Cronometer’s motion to compel further trade secret identification. Exhibit 10 is Trustwell’s response to Cronometer’s Interrogatory No. 2, which is Trustwell’s trade secret identification. Exhibit 11 is a collection of data files comprising a database update that Trustwell provided to Cronometer in March 2022 pursuant to a limited-use license agreement. Exhibit 12 is that same information – the March 2022 database update – reflected in Excel spreadsheet format.

3. With respect to Exhibit 10, Trustwell’s trade secret identification, Trustwell does not object to filing that document on the public docket as is. It was originally designated confidential out of an abundance of caution. However, because its substance has been reflected and discussed in part in public filings in this action, Trustwell no longer believes it is necessary to file Exhibit 10 under seal.

4. I will discuss Exhibits 11 and 12 together because they are the same thing. As I mentioned above, Exhibit 11 is a collection of data files, and Exhibit 12 is that same information reflected in Excel spreadsheet format. In other words, both Exhibit 11 and Exhibit 12 are the

March 2022 database update that Trustwell provided to Cronometer, pursuant to a limited-use license agreement. That information is highly confidential.

5. Trustwell is a leading SaaS provider to the food and supplements industries. Among other things, Trustwell maintains a suite of highly confidential and proprietary nutritional data and related information that are widely recognized as the industry's top choice for food and supplement formulation, recipe development, labeling, nutritional analysis, and regulatory compliance. Trustwell's nutrition and activity tracking products are the nutritional analysis products of choice for dieticians in hospitals, schools, and other institutions.

6. One of Trustwell's most protected assets is its food and nutrition database, which contains an extensive compilation of nutritional values and related data used for nutritional analysis, including comprehensive nutritional breakdowns for up to 172 separate data fields, including proximates, vitamins, minerals, amino acids, and other nutrient components, for more than 90,000 brand name and generic foods and ingredients. This database represents a highly confidential and proprietary compilation and particular selection of data from multiple sources, including a substantial volume of ingredient components and related data that Trustwell itself created, supplemented, and/or augmented, that are not publicly available.

7. Part of Trustwell's business involves licensing this non-public database, or portions thereof, to customers around the world. Revenue generated from licensing the database is a material portion of Trustwell's overall business revenue. Because Trustwell invested so much to develop the database, through decades of investment in research and development, Trustwell likewise invests a substantial amount to protect its confidentiality.

8. For example, Trustwell uses a variety of electronic and other security measures to maintain the secrecy of the database information maintained in its secure facilities. Trustwell also uses a variety of measures with its employees to maintain the secrecy of the database

information, including confidentiality agreements and regular reminders of the highly confidential nature of the database.

9. With respect to customers, Trustwell licenses access to the database or portions thereof pursuant to agreements that contain confidentiality provisions and other protections substantially similar to those contained in Trustwell's license agreement with Cronometer (which expired in 2024). I have listed below some of the relevant provisions from Cronometer's license agreement.

10. The scope of Cronometer's limited-use license is defined in section 2 of its license agreement with Trustwell, as follows:

Licensee is licensed to possess and use a single copy of the Database for Licensee's own internal nutritional analysis business or research purposes. Licensee is *not* licensed to do any of the following: (a) sublicense, rent, lease, lend or otherwise transfer all or any portion of Database, or Licensee's access or use rights under this Agreement, without the prior written consent of [Trustwell]; (b) remove or obscure the [Trustwell] copyright or trademark notices; (c) compile or extract, directly or indirectly, the data from the Database in whole or in part for the purpose of redistribution. (Emphasis in original.)

11. Section 6 of Cronometer's license agreement (Ownership/Copyrights) provides as follows:

[Trustwell] is the sole owner of the Database (including all customized and derivative works), and shall remain the owner of the Database copy provided to Licensee under this Agreement. All rights not specifically granted in this license are reserved by [Trustwell] ... [Trustwell] shall remain the sole and exclusive owner of all interests in the Database, and of all derivative works thereof.

12. Section 8 of Cronometer's license agreement (Licensee's Obligations to Protect Database) provides as follows:

Licensee covenants to use the Database only for the purposes set forth in this Agreement and for no other purpose. As a continuing condition of this license, Licensee covenants that it

shall use its best efforts to protect the Database from unauthorized use, reproduction, publication or distribution.

13. Section 11 of Cronometer's license agreement (Covenant Not to Compete) provides as follows:

Licensee shall not, during the term of this Agreement, develop, market, license or sell any product or service that is competitive with the products or services [Trustwell] provides to Licensee.

14. Section 12 of Cronometer's license agreement (Proprietary Information) provides, in pertinent part, as follows:

a. Nature of Proprietary Information. During the performance of this Agreement either party may acquire access to, or knowledge of, confidential, proprietary or trade secret information belonging to the other party, including, without limitation, information about publication plans, software features under development, software code, algorithms, database structures and content, the content of the Database, report formats, interface designs, business plans and marketing plans ("Proprietary Information").

b. Covenants Regarding Proprietary Information. Each party agrees that it and its employees, agents and representatives shall: (i) keep the other party's Proprietary Information strictly confidential, and shall not disclose such information to any other person or entity without the express written consent of the other party except as specifically required to perform their respective obligations under this Agreement; (ii) limit internal disclosure of the Proprietary Information solely to their employees, agents and representatives who must be apprised of the Proprietary Information to advance the purposes of this Agreement (and only to the extent that they must be apprised for those purposes); (iii) require all such persons to honor the confidentiality restrictions imposed upon the parties; (iv) use the Proprietary Information solely for the purpose of performing their duties or exercising their rights under this Agreement; and (v) upon demand, immediately surrender to the owner of the Proprietary Information all notes, records, documentation, models, software, databases and other items or materials containing such Proprietary Information.

15. In addition to investing a substantial amount to protect the confidentiality of its food and nutrition database, Trustwell also invests a substantial amount to protect against unauthorized access to or use of the database. That is one of the reasons Trustwell filed this lawsuit. A large part of the value of Trustwell's food and nutrition database is that it is proprietary to Trustwell and not available anywhere else. That is why so many customers, including Cronometer, choose to license the information.

16. As set forth above, section 12(b) of the limited-use license agreement requires Cronometer, "upon demand, [to] immediately surrender to [Trustwell] all notes, records, documentation, models, software, databases and other items or materials containing such Proprietary Information." I am aware that, on August 22, 2024, following Trustwell's initial cease-and-desist letter to Cronometer in this action, Trustwell expressly demanded that "Cronometer immediately surrender to Trustwell all notes, records, documentation, models, software, databases, and other items or materials containing, referencing, or based on Trustwell's confidential, proprietary, and trade secret information, including, by way of example only and without limitation, database structures and content, report formats, interface designs, business plans, marketing plans, information about publication plans, software features under development, software code, and algorithms." That includes all food and nutrition data and database updates that Cronometer received pursuant to the license agreement.

17. Until I reviewed Cronometer's motion to compel further trade secret identification and related motion to file under seal, I was not aware that Cronometer has continued to retain any of Trustwell's food and nutrition data or database updates, particularly given Trustwell's express demand to return all such information. I find it extremely concerning and disappointing that, more than six months into this lawsuit, and long after Cronometer's license expired, Cronometer apparently continues to retain and use Trustwell's confidential and proprietary information without authorization.

Page 6

**K. JONES DECLARATION IN
RESPONSE TO DEFENDANT'S
UNOPPOSED MOTION TO SEAL**

**DUNN CARNEY ALLEN HIGGINS & TONGUE
LLP**
Attorneys at Law
851 SW Sixth Ave., Suite 1500
Portland, Oregon 97204-1357
503.224.6440 / Fax: 503.224.7324

18. If Trustwell's food and nutrition database, or portions thereof, were to be revealed publicly, that would significantly reduce or destroy the value of the database, depending on the portion(s) revealed, because our customers then could obtain that information for free elsewhere. That would substantially reduce or eliminate the revenue Trustwell generates by licensing the database, which would have a materially negative impact on Trustwell's business.

19. For all of the reasons above, I believe Exhibits 11 and 12 should be filed under seal. If the Court has any questions, I would be pleased to address them. If the Court is inclined to file Exhibits 11 and/or 12 publicly, I request an opportunity to address this issue further with the Court before such disclosure, given the significant and immediate harm that public disclosure would cause to Trustwell.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I executed this declaration on March 27, 2025 in
Mebane, North Carolina.


Katy Jones